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In re the Matter of:) Case No.: 07-069
)
State of New Hampshire Banking) Order to Show Cause
)
Department,) With Immediate Suspension
)
and) And
)
Dana Capital Group, Inc., Dana H.) Cease and Desist Order
)
Smith, and Amanda Smith)
)
Respondents)
)
)
)

This Order commences an adjudicative proceeding under the provisions of
RSA 397-A, RSA 383:10-d, RSA 541-A and BAN 200 et seq.

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking Department (hereinafter "the Department") may issue an Order to Show Cause why a license should not be revoked. RSA 397-A:17 states that the Department may issue such Order when a licensee violates any provision of the Chapter, fails to meet the standards espoused in the Chapter, or for other reasons. RSA 397-A:21 states the Commissioner may impose penalties of up to \$2,500 per violation of the chapter.

Pursuant to RSA 397-A:18 II, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue and cause to be served an order requiring any person engaged in any act or practice constituting a violation of RSA 397-A or any rule or order thereunder, to cease and desist from violations of RSA 397-A.

1 Pursuant to RSA 397-A:17 and RSA 541-A:30 the Commissioner may by order
2 summarily postpone or suspend any license or application pending final
3 determination of any order to show cause, or other order, or of any other
4 proceeding under this section, provided the commissioner finds that the public
5 interest would be irreparably harmed by delay in issuing such order

6 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
7 such orders as are reasonably necessary to comply with the provisions of the
8 Chapter.

9 Pursuant to RSA 397-A:21, the Commissioner has the authority to
10 suspend, revoke or deny any license and to impose administrative penalties of
11 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

12 Pursuant to RSA 383:10-d, the Commissioner shall have exclusive
13 authority and jurisdiction to investigate conduct that is or may be an unfair
14 or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or
15 that may violate any of the provisions of Titles XXXV and XXXVI and
16 administrative rules adopted thereunder. The Commissioner may hold hearings
17 relative to such conduct and may order restitution for a person or persons
18 adversely affected by such conduct.

19 **NOTICE OF RIGHT TO REQUEST A HEARING**

20 The above named respondents have the right to request a hearing on this
21 Order to Show Cause and Order to Cease and Desist, as well as the right to be
22 represented by counsel. In accordance with RSA 541-A a hearing shall be held
23 not more than ten days from the signing of this Order.

24 After said hearing and within 20 days of the date of the hearing the
25 commissioner shall issue a further order vacating the cease and desist order or
making it permanent as the facts require and making such findings as are
necessary on the Show Cause order. All hearings shall comply with 541-A. If
the person to whom an order is issued fails to appear at the hearing after

1 being duly notified, such person shall be deemed in default, and the proceeding
2 may be determined against him or her upon consideration of the cease and desist
3 order, the allegations of which may be deemed to be true.

4 If respondents fail to request a hearing or respond to the orders
5 within 30 calendar days of receipt of these orders, respondents shall be
6 deemed in default, the penalties requested will be imposed, and the Cease and
7 Desist will be become permanent on the 31st day.

8 Any such request for a hearing shall be in writing, and signed by the
9 respondent or by the duly authorized agent of the above named respondent, and
10 shall be delivered either by hand or certified mail, return receipt request,
11 to the Banking Department, State of New Hampshire, 64B Old Suncook Road,
12 Concord, NH 03301.

13 STATEMENT OF ALLEGATIONS

14 The allegations contained in the Staff Petition dated May 22, 2007 (a
15 copy of which is attached hereto) are incorporated by reference hereto.

16 ORDER

17 WHEREAS, finding it necessary and appropriate and in the public
18 interest, and consistent with the intent and purposes of the New Hampshire
19 banking laws, and

20 WHEREAS, finding that the allegations contained in the Staff Petition,
21 if proved true and correct, form the legal basis of the relief requested,

22 It is hereby ORDERED, that:

- 23 1. The Respondents are hereby ordered to immediately cease
24 violating New Hampshire law; and
- 25 2. Respondent is hereby Ordered to Show Cause why its license
should not be Revoked; and
3. Each named Respondent is ordered to show cause why penalties
of \$2500 per violation should not be imposed; and

1 Finding delay would irreparably harm the public it is further ORDERED:

2 4. Respondent's license is hereby summarily suspended; and

3 5. A hearing shall be held no later than 10 days from today's
4 date on these matters.

5
6 SIGNED,

7
8 Dated: 5/22/07

/S/
PETER C. HILDRETH
BANK COMMISSIONER

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11 **NOTE: VIOLATION OF A CEASE AND DESIST ORDER IS A CRIMINAL OFFENSE.**
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1 7. The Respondent is currently unable to operate with the financial
2 integrity necessary to warrant the public confidence.

3 8. If these conditions existed at time of Respondent's application the
4 Commissioner would have been justified in denying the license.

5 9. Subsequently the Department along with other state regulators
6 engaged Respondent Dana in a conference call regarding its continued
7 licensure.

8 10. On a May 21, 2007 conference call with the company the Department
9 requested a pipeline report of all loans currently in process to
10 guard against possible harm to consumers given the financial
11 instability of the Corporation.

12 11. During this call Respondent Dana confirmed that their branches
13 operated as "net branches." Net branches is a term applied to
14 purported branch operations where the purported principal office has
15 no ownership interest in nor control over the operation of the
16 purported branch.

17 12. During this call they reported because of their financial situation
18 and their net branching structure they had no ability to produce a
19 pipeline report and no knowledge of loans started by the branches and
20 not yet completed.

21 13. Respondents further declined to survey their branches to compile a
22 pipeline report.

23 14. The State of New Jersey Department of Banking and Insurance issued
24 an order against Respondent Dana on April 18, 2007. As of this
25 petition date the Department has not been notified by Respondents of
this adverse action.

1
2 ISSUES OF LAW

3 II. The staff of the Department, alleges the following issues of law:

- 4 1. The Department realleges the above stated facts in paragraphs 1
5 through 14 of Section 1.
- 6 2. The Department has jurisdiction over the licensing and
7 regulation of persons engaged in mortgage banker activities
8 pursuant to NH RSA 397-A:3.
- 9 3. Pursuant to New Hampshire Banking law, RSA 397-A:5 the
10 Commissioner at time of completed application has 120 days to
11 determine whether the applicant's financial resources,
12 experience, personnel, and record of past or proposed conduct
13 warrant the public's confidence and issuance of a license.
- 14 4. Pursuant to RSA 397-A:5 the applicant is required to submit the
15 address of all branch offices located or to be located in the
16 state.
- 17 5. Licensees must notify the Department within 5 business days of
18 the occurrence of certain events according to BAN 2407.01. Said
19 events include the filing of administrative action by any state.
- 20 6. Pursuant to RSA 397-A:11 licensee's must maintain such records
21 as will enable the Department to determine compliance with the
22 Chapter and rules.
- 23 7. Pursuant to RSA 397-A:17 I(g) licensee's must supervise their
24 agents, originators, managers, or employees.
- 25 8. Pursuant to RSA 397-A:17 the Commissioner may issue an order
requiring a person to whom any license has been granted or any

1 person under the commissioner's jurisdiction to show cause why
2 the license should not be revoked, suspended, or penalties
3 imposed, or both, for violations of this chapter.

4 9. Pursuant to RSA 397-A:17 the Commissioner may issue an order
5 requiring a person to whom any license has been granted or any
6 person under the commissioner's jurisdiction to show cause why
7 the license should not be revoked, suspended, or penalties
8 imposed when the licensee or a person under its control is not
9 qualified on the basis of such factors as experience, knowledge,
10 and financial integrity.

11 10. Pursuant to RSA 397-A:17 the Commissioner may issue an immediate
12 suspension of a license.

13 11. Pursuant to RSA 397-A:18 the Department may issue a Cease and
14 Desist Order against anyone who it has reasonable cause to
15 believe is in violation of the provisions of the Chapter or a
16 rule or order under the Chapter.

17 12. Pursuant to RSA 397-A:20 the Commissioner may issue such order
18 as are reasonably necessary to carry out the provisions of the
19 Chapter.

20 13. RSA 397-A:21 IV provides that any person who, either knowingly
21 or negligently, violates any provision of Chapter 397-A, may
22 upon hearing, and in addition to any other penalty provided for
23 by law, be subject to an administrative fine not to exceed
24 \$2,500, or both. Each of the acts specified shall constitute a
25 separate violation, and such administrative action or fine may

1 be imposed in addition to any criminal penalties or civil
2 liabilities imposed by New Hampshire Banking laws.

3 14. RSA 397-A:21 V provides that every person who directly or
4 indirectly controls a person liable under this section, every
5 partner, principal executive officer or director of such person,
6 every person occupying a similar status or performing a similar
7 function, every employee of such person who materially aids in
8 the act constituting the violation, and every licensee or person
9 acting as a common law agent who materially aids in the acts
10 constituting the violation, either knowingly or negligently, may,
11 upon notice and opportunity for hearing, and in addition to any
12 other penalty provided for by law, be subject to suspension,
13 revocation, or denial of any registration or license, including
14 the forfeiture of any application fee, or the imposition of an
15 administrative fine not to exceed \$2,500, or both. Each of the
16 acts specified shall constitute a separate violation, and such
17 administrative action or fine may be imposed in addition to any
18 criminal or civil penalties imposed.

19 **RELIEF REQUESTED**

20 III. The staff of the Department requests the Commissioner take the
21 following Action:

- 22 1. Find as fact the allegations contained in section I of this
23 petition;
- 24 2. Make conclusions of law relative to the allegations contained
25 in section II of this petition;

3. Assess fines and administrative penalties in accordance with RSA 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this petition against each of the named Respondents; and
4. Order an immediate suspension of their New Hampshire mortgage banker license; and
5. Order Respondent to show cause why their license should not be Revoked; and
6. In accordance with RSA 397-A:18, Order the Respondent to Cease and Desist from violations of New Hampshire Law; and
7. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

RIGHT TO AMEND

IV. The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

/s/
James Shepard
Staff Attorney

5/22/07
Date